

IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH, AHMEDABAD

BEFORE SHRI G.D. AGRAWAL VICE PRESIDENT AND
SHRI S.S. GODARA JUDICIAL MEMBER

WTA No.1/Ahd/2012
A.Y.2005-06

ACIT(OSD), Circle-5, Ahmedabad.	Vs	M/s. Prasad Machinery Pvt. Ltd., Plot No.14 and 16, Phase-I, GIDC Estate, Vatva, Ahmedabad, Gujarat. PAN: AAACP6733C
(Appellant)		(Respondent)

Revenue by :	Shri O.P. Vaishnav CIT- D.R.,
Assessee(s) by :	Shri Parin Shah, A.R.

सुनवाई का तारख/Date of Hearing : 21/05/2015
घोषणा का तारख/Date of Pronouncement: 12/06/2015

आदेश/O R D E R

PER SHRI S.S. GODARA, JUDICIAL MEMBER

This Revenue appeal for A.Y.2005-06, arises from order of the CWT(A)-XI, Ahmedabad dated 28.11.2011, passed in case no.CWT(A)-XI/346/ACWT-Cir.5/10-11, deleting addition of Rs.9,58,22,800/-, in proceedings u/s.16(3) r.w.s. 17 of the Wealth Tax Act, 1957 in short the Act

2. Facts of the case are in a narrow compass. The assessee is a company. It did not file wealth tax return at the first instance. The Assessing Officer noticed from its income tax records that it had received rent pertaining to two new sheds totaling Rs.84,28,800/-. This made him to issue a notice u/s.17 of the Act. The assessee filed

its reply admitting ownership of the factory building for the purpose of manufacturing plastic processing machinery. It stated to have allotted certain space therein to its sister concern for enabling them to carry on their business in lieu of charging rent. The assessee would also invite Assessing Officer's attention towards section 2(ea)(3) of the Act exempting such houses/buildings occupied for the purpose of business or profession. The Assessing Officer did not agree. He adopted rent capitalization method as per the schedule III of the Act and computed assessee's taxable wealth of Rs.9,43,22,800/- in assessment order dated 20.12.2010.

3. The CWT(A) has reversed the Assessing Officer's action as under:

"2. The only effective ground of appeal is against addition in net wealth of Rs.9,58,22,800/- made by the A.O. against two industrial buildings owned by the appellant. The A.O. had dealt with these additions in para 3, 4 and 5 of the assessment order. It is noticed by the A.O. that assessee had received rent of Rs.96,28,800/- in respect of two industrial sheds viz. plot Nos. 14 & 16 at G.I.D.C. Estate, Vatva, Ahmedabad. The A.O. had worked out net maintainable rent in respect of these two industrial sheds at Rs.95,82,280/- after giving benefit of municipal and other taxes to the appellant. Net wealth of these assets was assessed at Rs.9,58,22,800/- by rent capitalization method as per provisions of Schedule III of the Wealth-tax Act, 1957.

2.1 During the appellate proceedings, appellant submitted as under:

"(1). As regards the factory buildings owned.:-

That, your appellant is the owner of two factory buildings constructed on plot nos. 14 & 16 of the lease-hold land of 99 years obtained from G.I.D.C. at Vatva. It may please be noted that out of the said two buildings one is in the occupation of your appellant since more than a period of 15 years which has been described here as an old factory building used for the purpose of business; whereas another such building though not occupied but under the ownership of your appellant is held as

such for a period of about 10 years, which has been described here as a new factory building used for commercial purpose only. It is in this behalf further submitted that the old factory building being under the occupation and ownership of your appellant, right from the beginning it has been shown as business asset and hence depreciation thereon is also claimed and allowed as such; whereas the new factory building though owned but not so occupied, is shown as an asset only.

(2). About the Rental Income earned from two factory buildings.:-

Your appellant at this stage respectfully invites Your Honour's attention on the crucial user of two factory buildings for commercial purposes; which is explained in this wise:-

That prior to the earning of rental income, your appellant had provided to each occupant to whom the premises were given on hire, the necessary facilities like in built over had crane along with electrical installations, furniture and fixtures and continuous water supply for testing the machineries etc. so that each occupier can carry out the business activities without any hindrance in the said hired premises. After all, this being an Industrial Zone the prime intention of the owner of the premises is to use it either for his own business purpose or to use it commercially by giving it on hire and thereby to earn rental income; the characteristic whereof is as good as a business income only.

Now for the year under reference certain space on hire was given in the old factory building to (1) Prasad Koch Technik Pvt. Ltd. on a total rent of Rs. 33 lakhs in a year and (2) KHS Machinery Pvt. Ltd. on total rent of Rs. 24 lakhs in a year; both together amounted to Rs. 57 lakhs. Whereas in a new factory building it was given on hire to (1) Prasad GWK Cool Tech Prvt. Ltd. on a total rent of Rs.21,16,800/- in a year and (2) P P I Pumps Prvt. Ltd. on a total rent of Rs.18,12,000/- in a year, both together amounted to Rs.39,28,800/-.

It is in this behalf further submitted for clarity's sake that the rental income of Rs.57 lakhs earned from the old factory building which being a business asset on which the depreciation is also allowed, is taxed as business income in Income-tax; whereas the rental income of Rs.39,28,800/- being from a new factory building though owned but not occupied is taxed under the head Income from house property.

(3). Legal submissions.:-

In view of the above Your Honou's attention is invited on S.2(ea) of Wealth-tax Act '57 which reads about the definition of " assets " chargeable to Wealth-tax, wherein it is also stated as to what is not included within the meaning of" assets " is mentioned in clause (3) and (5), which has been reproduced as under.:-

Clause (3). Any house which the assessee may occupy for the purpose of any business or profession carried on by him.

AND

Clause (5). Any property in the nature of commercial establishments or complexes.

Now it is in this behalf submitted that the old factory building owned and occupied as explained above is covered under clause (3) whereas a new factory building owned and used as explained above is covered under Clause (5) and thus both the factory buildings having been used and meant for carrying out the business activities, both are exempt from Wealth-tax.

(4). As regards the application of Sch. Ill R. W. Rule 3 of W.T. Rule'57.

Without prejudice to the above if however the value of the above said two factory buildings is required to be taxed on the basis of Gross maintainable rent which is finally arrived at to Net maintainable rent then in such a case it should be worked out on the basis of the formula given in Sch. Ill Rule 3 as under:-

As both the buildings have been constructed on a lease hold land of G.I.D.C.; the amount of total rent should be multiplied by 10 and further to arrive at net maintainable rent it should be reduced by the amount of taxes paid and thereafter it should be further reduced by an amount equal to 15% of the gross maintainable rent. Here it be noted that Municipal Tax for the year was paid by your appellant Rs.46,520/- and G.I.D.C. Tax was paid at Rs.35,640. Here it be further noted that rental income of the old factory building being taxed as business income since years on the ground of it being a business asset with depreciation allowed thereon since years; such an asset should not be brought to Wealth - tax through Sch. Ill rule 3 of the W.T. Rule '57.

In view of the above Your Honour is requested to please treat both the factory buildings as business assets carrying on the activities of a commercial nature both should be held as exempt from Wealth tax.

Please refer to above and in continuation of the written submissions D.05/01/2011 attached with the appeal filed on Dt. 12/01/2011, Your Honour's attention is invited on the further submissions stated as under, which may please be read along with the legal submissions explained in para 3 on page 2 of the written submissions D. 05/01/2011 as stated above.

That, S.2 (ea) of the Wealth-Tax Act '57, even before its amendment w.e.f. 07/04/97 was clear and unambiguous, because it had specified the buildings which were included in the definition of "asset", such as guest house, residential building, farm house situated within 25 kilometers of the municipal town, but it did not include commercial building and hence buildings used for business or commercial purposes were not taxable u/s. 3 of the W.T. Act '57. Thus, in the case of "Mavnak Poddar HUF v/s. W.T.O. reported in 262 I.T.R. p 633 it was held that " even prior to the amendment in S. 2 (ea) especially w.e.f. 01/04/'97, when the commercial building was not considered as an asset, the value of commercial building let out thereafter to tenants 01/04/1997, could not be included in the total wealth in A.Y. 2003-04".

Similarly I.T.A.T. Pune 6 Bench in the case of "Satvindersingh Kalra V/s. Dv. C.W.T. reported in (2007) 112 ITJ (pune) P.489 / (2007) 109 ITD P.241 copy of the said I.T.A.T. order is attached herewith, wherein it has been observed that " There is no conflict between the main enactment of C. (i) of s. 2(ea) and the exceptions provided in sub. clauses (1) to (5) which covers any property in the nature of commercial establishment or complex; and hence if the assessee owns more than one property in the nature of commercial establishments or complexes, the exemption shall be available to all such properties and it cannot be restricted to any one of them. Thus, in the light of main enactment in Cl. (i) and the exception provided therein by excluding the properties or the houses enumerated in sub. C/s. (1) to (5) from the main enactment the intention of the legislature becomes clear that the legislature did not intend to bring all buildings or land appurtenant thereto, whether used for residential or commercial purposes within the ambit of "assets" chargeable to tax under the W. T. Act. Further, in order to cover a case under sub. Cl. (5) it is not necessary that the property in the nature of commercial establishment or complex, should be occupied by the assessee for the purpose of any business or profession carried on by him as in the case covered by Sub. Cl. (3): because the nature and, purpose of use of the property is material, irrespective of the fact,; whether it has been used or occupied either by

assessee himself or by anyone else for the purpose of any business or profession carried on by them. "

In view of the above, Your Honour is requested to please consider the factual and legal aspect of this case on merit and allow the appeal of your appellant accordingly."

2.2 I have considered rival submissions. I have also gone through the assessment order and submissions of the Id.A.R. I have also perused the cases relied upon by the Id.A.R. It is seen that appellant is earning rent in respect of plot Nos.14 and 16 at G.I.D.C. Estate, Vatva, Ahmedabad. Since these industrial plots are being utilized for the purpose of business and these are revenue generating assets, accordingly, in my considered view, both these plots are exempt as per the provisions of section 2(ea) (5) of W.T. Act. This proposition is supported by the ratio of Satvinder Singh Kalra V/s. DCWT reported on (2007) 112 TTJ (Pune) 489, wherein it was held:

"Sub-cl. (5) covers any property in the nature of commercial establishments or complexes. In order to cover a case under sub cl.(5), it is not necessary that the property in the nature of commercial establishments or complexes should be occupied by the assessee for the purpose of any business or profession carried on by him as in the case covered by sub-cl.(3). Here, the nature and purpose of use of the property is material irrespective of the fact whether it is used or occupied either by the assessee himself or anybody else for the purpose of any business or profession carried on by them, as the case may be. To claim benefit of the sub cl.(5), one must prove and establish that the property claimed to be excluded from the definition of "assets", should be in the nature of commercial establishments or complexes. In this sub-cl.(5), complexes or establishments" are qualified with an adjective commercial, establishment or complex, therefore, must be of a commercial in nature. The word commercial means something which is used in or related to, a business or a trade. Commercial means relating to or engaged in or used for commerce. The word establishment' means an organization, building, construction, shop, store, concern or corporation. Thus, commercial establishment means some kind of place or building or shop or store where business or trade is carried on."

2.3 In view of the above facts, I am of the considered view that industrial plots owned by the appellant and used for the purpose of

commerce are exempt from wealth-tax as per express provisions of section 2(ea)(5) of the W.T. Act. Accordingly, the addition of Rs.9,58,22,800/- made by the A.O. in the net wealth of the appellant is ordered to be deleted. These grounds of appeals are allowed.”

This leaves the Revenue aggrieved.

4. We have heard both sides and perused the case filed. The Revenue seeks to restore the Assessing Officer's findings treating assessee's industrial sheds in question as taxable under the provisions of wealth tax law. It has come on record that the assessee is utilizing the same in its business of plastic processing machineries and generates revenue therefrom. The lower appellate authority has exempted these sheds from being assessed by quoting section 2(ea)(5) of the Act. It also quotes case law of the tribunal (supra) holding only nature and purpose of the property's usage as material irrespective of the user. The Revenue neither places on record any material rebutting the CIT(A) view holding the assessee's sheds being utilized in its business nor does it quote any case law to the contrary. We uphold the CIT(A) findings in these circumstances and reject the Revenue's ground.

5. The Revenue's appeal is dismissed.

Order pronounced in the Court on this day, the 12th June, 2015 at Ahmedabad.

Sd/-
(G.D. AGRAWAL)
VICE PRESIDENT

Ahmedabad; Dated 12/06/2015

Sd/-
(S.S. GODARA)
JUDICIAL MEMBER

Prabhat Kr. Kesarwani, Sr. P.S.

आदेश कॢतललल अॢत/Copy of the Order forwarded to :

1. अॢललथ / The Appellant
2. ॢथथ / The Respondent.
3. संबंॢत आयकर आयुॢत / Concerned CIT
4. आयकर आयुॢत(अॢल) / The CIT(A)-III, Ahmedabad
5. ॢभागीय ॢतललल, आयकर अॢलल अॢकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गाडॢफाईल / Guard file.

आदेशानुसार/ BY ORDER.

उप/सहायक ॢजीकार (Dy./Asstt.Registrar)
आयकर अॢलल अॢकरण, अहमदाबाद / ITAT, Ahmedabad